



CERRO COPPER PRODUCTS CO.

P.O. Box 66800
St. Louis, MO 63166-6800
618/337-6000

164410

August 13, 1990

Mr. James Stewart, Esq.
Lowenstein, Sandler, Kohl, Fisher & Boylan
65 Livingston Avenue
Roseland, NJ 07068-1791

RE: USEPA Response Costs for Fencing of Dead Creek Segment B

Dear Jay:

I enclose the executed signature page of the Administrative Order by Consent covering USEPA's cost recovery action for work performed at Dead Creek Site No. 60, also known as Creek Segment B.

I trust that we will be copied on the fully executed document at the time our share of the payment, amounting to \$3,125.00 is due.

Best regards,

Very truly yours,

CERRO COPPER PRODUCTS CO.

Paul Tandler
Vice President

PT/ge

Encl.

bcc: H. L. Schweich
J. R. Matcuk
File

LOWENSTEIN, SANDLER, KOHL, FISHER & BOYLAN

A PROFESSIONAL CORPORATION

COUNSELLORS AT LAW

65 LIVINGSTON AVENUE

ROSELAND, NEW JERSEY

07068-1791

TELEPHONE (201) 992-8700

FACSIMILE (201) 992-5820

SOMERVILLE OFFICE

TELEPHONE (201) 526-3300

LEE HILLES WERTHEIM
STUART S. YUSEM
KEVIN KOVACS
JOHN L. BERGER
PHYLLIS F. PASTERNAK
RICHARD NIEMIEC
MARY-LYNNE RICIGLIANO
LUCINDA P. LONG
STEPHEN H. SKOLLER
DAVID W. FIELD
MARY JO REICH
ANN P. OSTERDALE
MARTHA L. LESTER
LINDA PICKERING
MICHAEL O'B. BOLDT
BETH ANN WILANSKY
BONNIE K. LEVITT
MICHAEL D. SCOTT
ROCHELLE B. GALIBER
SOLON L. KANDEL
PAUL C. PAWLOWSKI
DENNIS F. GLEASON
ANTHONY J. REITANO, JR.
HOWARD A. TEICHMAN
ROBERT G. MINION
KAREN GAYNOR KILLEEN
M. ANNE CONLEY-PITCHELL
JEFFREY J. WILD
LEON S. SEGEN
TERRY E. THORNTON
ALEXANDER J. KOVACS
CONSTANCE J. ALEXANDER
MARIA A. DANTAS
ARTHUR H. SAIEWITZ
DAVID S. WOLIN
DOLORES M. BLACKBURN

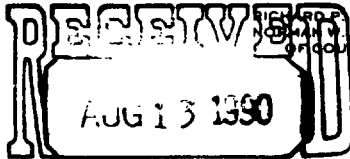
GEORGIA A. McMILLEN
MARC B. KRAMER
JOHN F. DELANEY
SCOTT E. RATNER*
LYNNE S. SCHERTZ*
PATRICK J. CONLON
SAMUEL ROSENBERG
JOHN M. NOLAN
GARY M. WINGENS
CHRISTINE RANIERI SMITH
MARJORIE E. KLEIN
IVAN M. BARON
VIVIAN D. LAGER
SUNIL K. GARG
GAIL E. XIOUES
EILEEN M. CLARK
MONICA C. BARRETT
BRIAN M. ENGLISH
RICHARD P. SHAPIRO
NANCY LAKE MARTIN***
ALLEN B. LANGJAHN****
JOHN B. MCCUSKER*
JAYNE A. PRITCHARD
MIRIAM KAHAN BRODY
GWEN J. LOURIE
DARRYL EVERETT GUGIG
SAMUEL B. SANTO, JR.
JONATHAN T. K. COHEN
CRAIG M. LESSNER
SUSAN L. YODOVIN
PAUL F. CARVELLI
JAY A. SOLED
SUSAN E. WAELBROECK**
ADAM L. GANS
KAREN E. TRAEGER*

*N.Y. BAR ONLY
**TEXAS BAR ONLY
***CA. BAR ONLY
****FL. BAR ONLY

ALAN V. LOWENSTEIN
RICHARD M. SANDLER
BENEDICT M. KOHL
ARNOLD FISHER
JOSEPH LEVOW STEINBERG
MATTHEW P. BOYLAN
BRUCE D. SHOULSON
JOHN R. MACKAY 2ND
MARTIN R. GOODMAN
JOHN D. SCHUPPER
STEPHEN N. DERMER
MICHAEL L. RODBURG
ALLEN B. LEVITHAN
R. BARRY STIGER
GREGORY B. REILLY
PETER H. EHRENBURG
HOWARD S. DENBURG
STEVEN B. FUERST
THEODORE V. WELLS, JR.

WILLIAM S. KATCHEN
MICHAEL DORE
GERALD KROVATIN
RICHARD D. WILKINSON
ALAN WOVSANIKER
KENNETH J. SLUTSKY
DAVID L. HARRIS
ZULIMA V. FARBER
WILLIAM P. MUNDAY
COLLEEN P. KELLY
DANIEL J. BARKIN
GEORGE J. MAZIN
JAMES STEWART
ROBERT L. KRAKOWER
KEITH H. ANSBACHER
LAURA R. KUNTZ
ROBERT D. CHESLER
RICHARD F. RICCI

RICHARD P. BOEHMER
NORMAN V. SPINDEL
OF COUNSEL



BY P. T.

VIA FEDERAL EXPRESS

Paul Tandler, Esq.
Cerro Copper Products
P.O. Box 66800
St. Louis, MO 63166-6800

Re: USEPA Response Costs for Fencing
of Dead Creek Segment B

Dear Paul:

I enclose a copy of Cornell Boggs' letter and attached Administrative Consent Order in the above matter. The Order complies with our previous discussions with USEPA to resolve this matter.

Please execute on behalf of Cerro the signature page and return it to me for distribution.

Cerro's obligation to pay its share of the amount due under the Order does not arise until after USEPA signs the Order to make it effective. Please call me with any questions.

Very truly yours,

James Stewart

JS:her
Enclosure

Dictated but not read.

081090M540/M2377-3

S201

Monsanto

LAW DEPARTMENT

Monsanto Company
800 N. Lindbergh Boulevard
St. Louis, Missouri 63167
Phone: (314) 694-1000

August 8, 1990

VIA FEDERAL EXPRESS

Kenneth Kessler, Esq.
Ruan Transportation
666 Grand Ave.
Des Moines, IA 50309

Paul E. Shorb, III, Esq.
Beveridge & Diamond, P.C.
Suite 700
1350 I St., N.W. Washington, DC 20005

James L. Stewart, Esq.
Lowenstein, Sandler, Kohl, Fisher & Boylan
65 Livingston Ave.
Roseland, NJ 07068

RECEIVED

AUG 9 1990

LOWENSTEIN, SANDLER KOHL
FISHER & BOYLAN, P.A.

Re: Dead Creek Site No. 60
Administrative Order by Consent

Gentlemen:

The EPA Assistant Regional Counsel assigned to Dead Creek Site No. 60, Elizabeth Doyle, telephoned this morning to inform me that she was agreeable to the terms of the attached Administrative Order by Consent. The next step is for each party to submit signature pages to Ms. Doyle at the address listed in the "Order" section at paragraph 3 on page 3. Doyle does not foresee any problems in having Mr. Adamus sign off on the Order, which is subject to a notice and comment period.

Please contact me at (314) 694-6032 if you have any comments or questions.

Sincerely,

N. Cornell Boggs, III

N. Cornell Boggs, III
Environmental Attorney

NCB/tap

attachment

2. Hazardous substances within the definition of Section 101(14) of CERCLA, 42 U.S.C. 9601(14), have been or are threatened to be released into the environment at or from the site.
3. As a result of the release or threatened release of hazardous substances into the environment, EPA has undertaken response actions at the site under Section 106 of CERCLA, 42 U.S.C. 9606, specifically, installing a chain link fence around the site portion of the Dead Creek, and may require future response actions.
4. In performing this response action, EPA incurred response costs totalling \$49,974.51. Further response costs may be incurred by EPA in the future.
5. The Illinois Environmental Protection Agency has indicated to U.S. EPA that Respondents are responsible for discharges of hazardous substances into the site.
6. EPA and Respondents desire to settle certain claims arising from Respondents' involvement with the site without litigation and without admission or adjudication of any issue of fact or law.

EPA DETERMINATIONS

Based upon the Findings of Fact set forth above EPA has determined that:

1. Dead Creek Site No. 600, also known as Dead Creek Segment B, is a Facility as that term is defined in Section 101(9) of CERCLA, 42 U.S.C. 9601(9).
2. Each Respondent is a "person" as that term is defined in Section 101(21) of CERCLA, 42 U.S.C. 9601(21).
3. Each Respondent is a responsible party within the meaning of Section 107(a) of CERCLA, 42 U.S.C. 9607(a), and is jointly and severally liable for response costs incurred and to be incurred at or in connection with the site.
4. The past, present or future migration of hazardous substances from the site constitutes an actual or threatened "release" as that term is defined in Section 101(22) of CERCLA, 42 U.S.C. 9601(22).

RESPONDENTS POSITION

1. The consent of the Respondents to the terms of this Order shall not constitute or be construed as an admission of any

past or future liability or of U.S. EPA's Statement of Facts or Determinations.

2. This Order is not intended for the benefit of any third party and may not be enforced by any third party.

ORDER

1. Respondents shall pay to the Hazardous Substance Superfund twelve thousand five hundred dollars (\$12,500) within twenty days of the effective date of this Consent order.
2. Such payment shall be made by certified or cashier's check made payable to "EPA-Hazardous Substance Superfund." The check shall reference the name of Respondents and the site, and shall be sent to:

U.S. EPA Superfund Accounting
P.O. Box 70753
Chicago, Illinois 60673

3. Within twenty days of the effective date of this Order, Respondents shall send a photostatic copy of their check to:

Elizabeth Doyle
Assistant Regional Counsel
U.S. EPA, Region V (5CS-TUB-4)
230 South Dearborn
Chicago, Illinois 60604

4. In addition to any other remedies or sanctions available to EPA, any Respondent who fails or refuses to comply with any term or condition of this Consent Order shall be subject to enforcement action pursuant to Section 122(h)(3) of CERCLA, 42 U.S.C. 9622(h)(3).
5. Subject to Paragraph 6 of this Consent Order, upon payment of the amount specified in Paragraph 1 of this Consent Order, EPA covenants not to sue or to take any other civil or administrative action against Respondents for "Covered Matters." "Covered Matters" shall include any and all civil liability under Section 107(a) of CERCLA, 42 U.S.C. 9607(a), for reimbursement of response costs incurred at or in connection with the site as of August 30, 1990.
6. Nothing in this Consent Order is intended to be nor shall it be construed as a release or covenant not to sue for any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which EPA may have against Respondents for:

- (a) any continuing liability as a result of failure to make the payments required by Paragraph 1 of this Order; or
 - (b) any matters not expressly included in Covered Matters, including, without limitation, any liability for damages to natural resources.
7. Nothing in this Consent Order is intended to be nor shall it be construed as a release or covenant not to sue for any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which EPA may have against any person, firm, corporation or other entity not a signatory to this Consent Order.
8. EPA and Respondents agree that Respondents signing this Administrative Order by Consent and the payment of the amount required in accordance with Paragraph 1 of this Consent Order does not constitute an admission of any liability by any Respondent and shall not be considered an admission of liability for any purpose. Specifically, Respondents do not admit and retain the right to controvert in any subsequent proceedings, other than proceedings to implement or enforce this Consent Order, the validity of the USEPA Findings of Fact and Determinations contained in this Consent Order.
9. In consideration of EPA's covenant not to sue in Paragraph 5 of this Consent Order, Respondents agree not to assert any claims or causes of action against the United States or the Hazardous Substance Superfund arising out of the EPA activities in installing a chainlink fence around the site portion of Dead Creek as defined in Paragraph 5 above, or to seek any other costs, damages, or attorney's fees from the United States, its agencies, employees or contractors arising out of such chainlink fence installation activities.
10. Subject to Paragraph 6 of this Consent Order, EPA agrees that by entering into and carrying out the terms of this Consent Order, Respondents will have resolved their liability to the United States for "Covered Matters" pursuant to Section 113(f)(2) of CERCLA, 42 U.S.C. 9613(f)(2), and shall not be liable for claims for "Covered Matters."
11. This Consent Order shall be subject to a thirty-day public comment period pursuant to Section 122(i) of CERCLA, 42 U.S.C. 9622(i). In accordance with Section 122(i)(3) of CERCLA, 42 U.S.C. 9622(8)(3), EPA may withdraw its consent to this Consent Order if comments received disclose facts or considerations which indicate that this Consent Order is inappropriate, improper or inadequate. In the event the USEPA does withdraw its consent to this Administrative

Order, all findings, determinations, statements, and any other effect of this Order shall be deemed null and void.

12. The effective date of this Consent Order shall be the date upon which EPA issues written notice to Respondents that the public comment period pursuant to Paragraph 11 of this Consent Order has closed and that comments received, if any, do not require modifications of or EPA withdrawal from this Consent Order. The time limitations addressed in paragraph 1 of the "Order" section shall not begin to run for each Respondent until each has received, as evidenced by Certified Mail, a copy of the signed Administrative Order by Consent.

IT IS SO AGREED AND ORDERED:

U.S. Environmental Protection Agency

By: _____
Valdas V. Adamkus
U.S. Environmental Protection
Agency v.

Date

By:  _____
Paul Tandler

August 13, 1990

Date

Vice President
Title

CERRO COPPER PRODUCTS CO.
Company